

1509/550.

A
L E T T E R

TO A L A T E

Member of the U—y of O—d,

WITH RESPECT TO THE

Two Explanatory Statutes

PROPOSED TO

The C-----N.

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*Qui pergit, quæ vult, dicere; ea, quæ non
vult, audiet.*

TER.



A
L E T T E R, &c.

S I R,

THE Improvements you made, when a Student in the U-----y of O----d, and the Concern you have ever since retained for its Welfare, will not permit you easily to believe that it can do wrong: This is a laudable Prejudice, and I find myself in a good Degree affected by it. This U-----y hath in all Ages made a Figure in the Learned World; and is at this Time able to produce as large a Number of *worthy* Men, as any U-----y in *Europe* can boast of: The *Heat* and *Passions* of *Individuals*, ought not to be imputed to that grave and venerable *Body*: Warm Men make the greatest Noise in *all Communities*, and very often carry Points which prove hurtful to the Society; but in *This* they have seldom been significant, and tho' for a short Time they may seem to have had an Influence, they have not been able to support it. To the Intemperance of *these* Men we owe our present Dispute, and

the *Indecency* with which it hath been carried on; *Some* have acted in so extraordinary a Manner, that they will not be pleased to see it set out in its proper Light; but you, who sincerely wish the Credit and Prosperity of the U-----y, will be glad to receive a true Representation of it; and therefore without making any Apology, I shall proceed to give you as short and clear an Account of it as I can. The Question is, Whether any of the Statutes confirmed by King *Charles* the First, can be altered, or explained by the U-----y, without the *King's* Consent: And in order to your having a true Notion of it, it will be necessary to look back, and consider, what occasioned the making of these Statutes; and the Solemnity which attended the Reception of them. Before Lord *Pembroke's* Time, the University made, altered, or repealed their Statutes, as they thought proper: This had produced such a Variety and Contradiction in them, that it was very difficult to know which were in Force; and therefore Lord *Pembroke*, who was then *Chancellor*, and was sensible of the Mischief the University suffered from this Disorder in its Laws, found it necessary to compile a new Body of Statutes, and to restrain the Liberty of altering and explaining them. For this Purpose, several eminent Persons in the University were employed

to



to draw the Statutes into One Body, digested under several Heads : Which being finished, a C-----n was held upon the *Twentieth* of *August*, 1633, in which the Vice-Chancellor informed the *Doctors and Masters*, "*Statuta*
 "*longo et fido examine in Conventu Præfectorum*
 "*ventilata — Ultimam Cancellarii manum expectare. Roganti igitur an placeret ut Cancellarius*
 "*Academicæ nomine rogaretur hanc inter*
 "*curas suas numerare provinciam, ut legibus illius*
 "*etiam judicio limatis et firmatis auctoritas et fides major adesset et reverentia ; proponenti*
 "*ista Vice-Cancellario assensu unanimi annuit*
 "*Convocatio.*" The Statutes, having been transmitted to Archbishop *Laud* in pursuance of this Order of Convocation, were approved of by him ; and he returned them to the *University*, with a Letter which was read in *Convocation*, upon the 22d of July 1634 ; in which he acquainted them, that, "*To save the Purse of the*
 "*University, and to gain Time, it was thought*
 "*fit rather to print than to transcribe so many Copies*
 "*as might serve for the necessary Use of the*
 "*University ; and that he thought it expedient,*
 "*that in every House, they should have the Rule*
 "*of the Publick Government by them, that they*
 "*might see the Way to their Duty. He also*
 "*proposed, that there should be a great Ledger*
 "*Book, written out fair, which was to be the*
 "*authentic*

“ authentic Copy under Seal, and to rest in Ar-
 “ chivis, to be the future Judge of all Statutes
 “ which might be corruptly printed or transcribed:
 “ But before this should be written, he held it
 “ expedient to put these Statutes into Practice
 “ and Execution for the Space of One Whole
 “ Year; to the End that it might appear, if
 “ any necessary Thing had slipped the Care of
 “ himself, and those whom the University trusted
 “ with him; for if any such Thing should be dis-
 “ covered, it might easily be amended in the Mar-
 “ gent of the printed Copies; and after this Ex-
 “ perience made, the authentic Copy might be
 “ written fair, without any Interlining or other
 “ Blemish, and so be a Rule to Posterity of
 “ greater Credit.” When these Statutes had
 undergone their Year of Probation, they were
 confirmed by the King, and the Archbishop,
 and transmitted to the University by Commis-
 sioners appointed to deliver them; and the Arch-
 bishop sent a Letter by the same Commissioners,
 which was read in Convocation, in June, 1636,
 and had in it the following Clauses. “ Trans-
 “ misi vobis Statuta quæ annum probationis suæ
 “ complevere, jam ex usu illo in nonnullis emen-
 “ data, et potestate a vobis concessa misi sub figillo
 “ meo vestroque, in debita juris Forma confir-
 “ mata; quum ecce placuit Regi Serenissimo mu-
 “ sisque vestris addictissimo suam etiam super ad-
 “ jicere

“ *jicere confirmationem manu propria et sigillo magno munitam.*” The King at the same Time sent a *Charter* to the University, which, together with the Book of Statutes, was delivered in Convocation by Mr. Secretary Cooke: By this *Charter*, after having recited that Archbishop *Laud* had caused the Statutes to be drawn together into one Book (the several Titles of which are particularly set forth in the Charter) The King, for *Himself, his Heirs, and Successors*, did *ratify and confirm* the said Book, and *all and singular the Statutes* therein contained; granting to the *Chancellor, Masters, and Scholars, and their Successors*, that all the said Statutes should *for ever* be in Force in the *University*; and that all the Statutes of former Ages, which were any Way contrary or repugnant to them, should be abolished and abrogated for ever: And by the said *Charter* all *Heads and Governors of Colleges and Halls* were directed, the same Day the Charter should be read in Convocation, to give their Assent to the said Book, and to all the Statutes therein mentioned, and to confirm such their Consent by subscribing their Names thereunto: The Charter likewise commanded all Masters and Scholars of the said University, within six Months, to take an Oath to observe these Statutes. At the Close of this Convocation the

Vice

Vice Chancellor, nomine Universitatis, received the Book of Statutes.

I have given you the History of these Statutes at large; that you may see, how great Care was taken in forming them, and in securing the perpetual Observance of them. The Solemnity with which they were delivered to the University, and the Oath taken by the several Members, had so considerable an Effect, that in the Space of an *Hundred Years* after their Reception, it doth not appear, that any Attempt was made to alter, or explain them. Had our Predecessors *less Knowledge* of the *Power* of the University, or *less Zeal* for its *Interest*, than the *Gentlemen* who *now* take upon them the Government of it? No one can believe this; The Names of *Fell*, *Halton*, and *Aldrich*, will always be mentioned in this Place with Respect; their Knowledge in our Laws, and their Zeal for our Welfare, procured them Esteem whilst living, and will perpetuate their Memories amongst us. *They* never presumed to explain any of these Statutes; *they* were sensible of the Mischief which the University *formerly* suffered from a *Liberty* of *altering its Laws*; and that the Stat. Tit. X. Sect. 2. was made to *prevent* this Inconvenience *for the Future*. If it had not been understood that
this

this *Power* was *restrained*, some Instances of the Exercise of it might be shewn; for it cannot be supposed, that no Occasion should have offered, or been taken, for using it in so many Years. The Advocates for these Statutes will have too much *Modesty* to mention the very few Alterations made within the last *Twenty or Thirty Years*; These, being Precedents of *their own making*, can have *no other Weight* than they derive from *Reason*. If the University hath the Power now contended for, they may alter *all* our Statutes, and bring us back into the same *Confusion*, from which we were rescued by *King Charles the First*: These Statutes were wisely calculated for our Peace and Government; nothing was left undone to make them clear and intelligible, and to prevent Controversies about the Meaning of them; and therefore, as very great Power was placed in the Convocation by these Statutes, and by the antient Constitution of the University, it was thought proper, that the *Persons, of whom this Assembly was to consist*, should be *ascertained*; and to this End a particular Statute was made, declaring, *that all Doctors, and Masters, as well regent as non-regent*, should be considered as *Members of it*.

The Convocation being thus constituted; and it being foreseen, that many *improper Things*

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might

might be proposed and carried by the younger Part of it, the Statute Tit. 13, provides that there should be an *Hebdomadal Meeting of the Vice Chancellor, Proctors, and Heads of Colleges and Halls*, to deliberate about defending the Liberties and Privileges of the University: *Et si quid super Bono Regimine, Profectu Scholastico, Honestate vel Utilitate communi et ex usu Academiae, ipsi vel major Pars eorum deliberato opus esse duxerint, de Eodem deliberandi potestatem habeant; quo melius et consultius post hujusmodi Deliberationem in Venerabili Domo Congregationis proponatur, et deinde, maturo cum Consilio in Venerabili Domo Convocationis de eodem statuatur et decernatur.* And as a further Check upon the Convocation, it was declared by the Statute Tit. X. Sect. 1. *Ut Nihil pro decreto aut concessio habeatur, quod Cancellarius, sive ejus Vice Cancellarius, vel Ambo Procuratores, sive eorum Deputati, negaverint.*

This being the *present Constitution* of the U-----y, many Gentlemen of late Years (after they had ceased to be Members of, or to have any Concern with it) have entered their Names in the *Books* of some C-----e, or H--ll, to give them a *Pretence of Voting* in Matters of Importance. This is grown so much into Practice, and is done by so large a Number, that

that the *foreign Voters*, joining with a few in the U-----y, are able to determine all *Questions* against the rest of the Body: Some Gentlemen, esteeming this a Grievance, complained of it; and proposed, that a *New Statute* should be made, to declare that *Foreign Voters* should not be admitted; and they understood that the H--ds of C-----s and H--lls thought it a *reasonable* Proposal, and agreed to it; and that the V-----r had undertaken to draw up the Form of a *Statute* for that Purpose; but they were greatly surprized to see two Statutes produced at the next *Hebdomadal* Meeting, which, after having undergone many Alterations, were at length proposed to C-----n in the following Words:

De Personis, ex quibus constat magna Congregatio sive Convocatio Magistrorum Regentium et non Regentium.

CUM nullo Statuto hactenus satis accurate definitum sit ex quibus Personis constet magna Congregatio, sive Convocatio Magistrorum Regentium et non Regentium, unde haud leves oriri poterunt lites, et Quæstiones non facile dirimendæ, visum est Academiæ novo Statuto Remedium huic malo adhibere.

Statutum est igitur, quod ad magnam Congregationem, five Convocationem, accedant, et jus ibidem deliberandi et suffragandi habeant, Doctores tantum et Magistri inferius descripti :

Primo, Cancellarius, five Vice-Cancellarius, et ambo Procuratores, five eorum Deputati, quorum suffragia inter alia Doctorum et Magistrorum suffragia annumeranda esse censemus.

Secundo, Omnes Doctores in sacra Theologiâ, Medicinâ, vel Jure Civili, et Magistri, necessariò Regentes.

Tertio, Omnes Collegiorum et Aularum Præfecti, et eorum Deputati; omnes itidem quotquot de Fundatione alicujus Collegii sint, qui aliquando in Jure Civili vel Artibus rexerunt.

Quarto, Omnes Doctores in sacrâ Theologiâ, Medicinâ, vel Jure Civili, intrâ Universitatis præinctum familiam alentes; omnes itidem Professores et Prælectores publici, qui aliquando in Jure Civili, vel Artibus rexerunt, si modo Exercitia a Statutis præscripta suis vicibus per se vel per alium præstiterint, et Feoda Universitati et ejus Officiariis debita persolverint. Qui vero hæc Exercitia præstare, aut Feoda persolvere, aut recusaverint, aut neglexerint,

iis cuiuscunque sint ordinis, nullum jus suffragandi concedimus.

Quintò, Omnes Convictores, qui aliquando in Jure Civili, vel in Artibus rexerunt, qui a tempore capeffendi Gradum, five Magistri in Artibus, five Doctoris, in libro Promptuarii alicujus five Collegii, five Aulæ, nomina inscripta habuerunt, qui suas concionandi et disputandi vices sustinuerunt, et qui Feoda Universitati, et ejus Officiariis, debita persolverunt.

Quòd siquis ab uno Collegio, vel Aulâ, ad aliud, juxta formam in Statuto Tit. iii. §. 3. descriptam migraverit, modò intrâ tres menses in aliud Collegium, five Aulam, se receperit, neque interim aliquod exercitium aut onus Academicum detrectaverit, is reputabitur, non obstante hoc intervallo, per omne suum tempus nomen in aliquo Collegio, five Aulâ, retinuisse.

Siquis vero Doctor, vel Magister Artium, ab Universitate discesserit, et postea rursus studendi causâ huc commigraverit, vel siquis ab alia Academiâ adventans hic incorporatus fuerit; talis, postquàm per centum et octoginta dies continuos, five discontinuos, intrâ unius anni spatium in Universitate personaliter resederit, se coram Vice-Cancellario, in Convocatione, five
Congregatione

Congregatione sistat, qui testimonio residentiae suae a Praefecto Collegii sui sive Aulæ, sive ejus vicem gerente, adducto, eum rursus ad jus suffragandi in domo Convocationis teneatur admittere. Postquam Admissionem eum Jus suffragandi habere statuimus, modo nomen inscriptum in Libro Promptuarii alicujus Collegii sive Aulæ habuerit, et omnia Exercitia et Onera a novæ Admissionis tempore subierit.

Provisio tamen, quod hoc Statutum non extendatur ad eos Doctores et Magistros, qui nomina habuerunt in libro Promptuarii alicujus Collegii sive Aulæ ante Paschatis Festum proximè elapsum; quibus jus suffragandi concedimus, modo Feoda Universitati debita persolverint, et suas in posterum concionandi et disputandi vires præstiterint.

Insuper statutum est quòd omnes sub conditionibus suprà limitatis suffragandi jure gaudeant, qui ad Gradus, quibus insigniti sunt, per Diploma, vel per Decretum Convocationis, non autem qui tantum honoris causâ admissi fuerunt.

Ut melius verò constet in futurum quibus jus suffragandi competit, statutum est quòd unus Bedellorum, ad hoc negotium a Vice-Cancellario deputandus, a Promo uniuscujusque Collegii

legii et Aulæ Schedulam manu Præfecti Domus, sive ejus vicem gerentis, consignatam, continentem nomina omnium Doctorum et Magistrorum istius Domûs jus suffragii secundum conditiones prædictas vendicantium quotannis post Comitia finita exigat et recipiat; quorum nomina unà cum nominibus necessariò Regentium, Doctorum commorantium, et Professorum et Prælectorum extra Collegia, vel Aulas, degentium in Librum referat, cujus Libri exemplar apud Vice-Cancellarium reponatur. Omnes autem quorum nomina sic, ut præfertur, in illum referuntur librum, ad omnia Exercitia præstanda, et Onera subeunda, gradui suo competentia, se firmitè teneri noverint.

*Explicatio Statuti de Privilegiis Universitatis
et Civitatis simul non fruendis, Tit. II.
Sect. 9.*

CUM hoc Statuto decretum est, ut *Officiarius Universitatis, aut quisvis alius, qui Libertates et Privilegia Civitatis Oxon. aut obtinuit, aut seriò ambiit, e vestigio Officiarius Officio suo privetur, alius verò quisvis omnibus Libertatibus in perpetuum excludatur*; et cum de sensu hujus Statuti Controversia exorta fuerit; placuit Academiæ hoc Statutum ita explanare
et

et interpretari, ut *perpetua Exclusio* intelligatur non de iis, qui olim in Matriculam Universitatis relati, ab eâ bonâ fide discesserint, non etiam si in alicujus Collegii, sive Aulæ, Promptuarii libro nomina adhuc honoris causâ inscripta retineantur; sed de iis duntaxat, qui simul utriusque et Universitatis et Civitatis Privilegiis frui voluerunt.

Siquis igitur pridem in Matriculam Universitatis relatus Libertates Civitatis obtinuerit, vel serîo ambierit, ab omnibus Universitatis Libertatibus eum ipso facto exclusum decernimus, donec modo et formâ in superiore Statuto, nempe Tit. II. Sect. 8. descriptis Libertatibus Civitatis renuntiaverit. Quâ factâ renuntiatione eum ad Libertates Academicas rursus per Domum Convocationis admitti permittimus.

The first of these S--tu--s being *unequal*, and calculated to serve *particular Purposes*, was far from answering what was expected from it; and the *Gentlemen* who drew it up, apprehending that it would not bear a *Royal Examination*, insisted, the C-----n had *Power* to *establish* it, *without the Consent of the Crown*. This produced Debates amongst the *H--ds of Houses*; several of them being of Opinion, that the U-----y could *not*, by it's own *Authority*,
establish

establish or enact these Statutes; and therefore a Case was drawn up, and laid before two Gentlemen of the Law for their Sentiments upon it; they gave their Opinions that the U-----y *might do it*. But the Case laid before them is thought *defective* in many Particulars, which I shall not mention here, because they are taken Notice of in the P-----s *Representation*, which I shall give you at large.

Whilst these Things were transacting and before the S--tu--s were proposed in C-----n, the former P-----s left their Offices, and were succeeded by two other Gentlemen. What passed with respect to these S--tu--s after they became P-----s, and whilst Dr. R-----ph continued in the *Office of V-----r*, will appear from the *two Papers* which they *published*; and which I shall transcribe for your Information.

A Representation of the Conduct of the Proctors, with respect to the Two Explanatory Statutes proposed by the Vice-Chancellor to Them and the Heads of Houses.

ON Friday the 15th of June there was a Meeting of the Heads of Colleges and Proctors for explaining two of the Statutes confirmed

firmed by King *Charles* the First : The Statute which authorises the Meeting of these Gentlemen supposes, that they are seriously to deliberate and debate upon all Matters which shall be proposed, before they come to any Resolution; and therefore the Proctors, having previously considered of the Matters which were to be the Subject of their Debate, reduced into Writing the several Reasons which, they conceived, would clearly prove that the University had *no Power* to make an *explanatory Statute*; and they expected, that every Gentleman who thought otherwise, would at least have endeavoured to have shewn, that they were not restrained by their Oaths, or by the Law, from making such Statutes. It was well known that several Gentlemen had considerable Difficulties on both these Heads; but the Question was put, and Opinions delivered, the Majority of which was, that the University had *this Power*, without offering any other Reason than the Opinion of Council taken on their own State of the Case, which was thought by several present to be a very defective State of it: However, the Proctors could not satisfy themselves with declaring, that they had very different Sentiments of this Matter, without mentioning the Reasons which induced them to be of a contrary Opinion from the Majority; and accordingly they gave many

Reasons

Reasons why they could not concur in that Vote. One Gentleman would have prevented the Proctors from entering into any Discussion of the Matter, saying, " We do not want your Reasons, but your Votes:" Perhaps this hath been the usual Way of proceeding at this Meeting; but the Proctors being Strangers to such a sort of Practice, and apprehending, that in Matters of Trust and Importance, every Man should be ready to give a Reason for his Opinion, ventured to offer their Reasons openly, (notwithstanding the Dislike that was expressed of it) in the following Words:

The Difficulties which we made, touching the Power of altering any of the Statutes established by King *Charles* the First, were founded upon the Oath which every Member of the University had taken to observe them, and upon the Charter which granted these Statutes to the University. We never conceived the least Doubt, whether Statutes which had no other Sanction than the antient Statutes of the University had, or By-Laws made by other Corporations, could be altered or explained; we knew they might, and did not want the Opinion of Council to convince us of it: But whether the King's Charter, reciting the several Titles of these Statutes, and not only so-

lemnly confirming them, but also granting to the Chancellor, Masters and Scholars, and their Successors, that they shall for ever be in Force in the University, can be disobeyed, after it hath been accepted, and acted under for so many Years, still remains a Difficulty, and is not stated in the Case, nor answered by the Council.

It seems to be admitted by the Answer to the Case, that the King may, by the same Charter which creates a Corporation, give By-laws, which shall be always binding to it; and if he may do this by the Original Charter, what Reason can be assigned why he may not also, by a subsequent Charter, give Laws or Statutes to a Corporation, if such Corporation shall think fit to accept it? This was not doubted by our Predecessors; for it is very remarkable, that the present Statutes, so far as they vary from the antient ones, do not appear to have been enacted by Convocation, or to have had any other Authority than the King's Charter. The University indeed received the Charter, and the Vice-Chancellor *nomine Universitatis amplexus est*, the Book of Statutes; but the Convocation doth not seem to have passed any Vote for the enacting or the Reception of them.

It is well known in this Place, that every Member of the University upon his Admission takes a solemn Oath, that he will observe all the Statutes of the University; but the Case industriously avoids to state that Fact, and *only* takes Notice, that the Heads of Colleges and Halls, and Proctors, upon receiving the Book of Statutes from the King, took the Oath. It is hoped that this was not done to induce a Belief that none of the present Members have taken it. If this Oath had been made Part of the Case, it is possible it might have varied the Opinion; but whatever Weight it would have had with the Council, it is certain it will have it's proper Weight in the University; and Gentlemen will consider, whether they are at Liberty to unmake a Statute which they have sworn to observe. It will be no Answer to say, that when it is repealed it will be no longer a Statute, and that the Observance of it cannot afterwards be exacted: For supposing that to be true, the Persons who have sworn to observe it, and concur to repeal or alter it, on purpose that it may not be observed, seem to violate the Oath; inasmuch as they, by their own Act, make it impossible to observe it. If any one shall not think this Reasoning conclusive, he is desired to read the Statute, Tit. x. Sect. 11. §. 2. which expressly forbids the explaining

explaining any of the Statutes confirmed by Royal Authority, without the special Licence of the King. A Man must have uncommon Talents that can make his Oath to observe this Statute, consistent with the new Statute, proposed to be made for no other Purpose but to explain Royal Statutes.

Some Gentlemen to avoid the Force of this Statute, have supposed the Words *Statuta Confirmata* mentioned in it, do no way influence the present Question; and that they refer only to Statutes which had the Royal Sanction, before the Statutes under which the University now acts, were given. But it is very unfortunate for these Gentlemen, that they have not in their Case pointed out one single Statute which had been so confirmed, and we think they never will be able to do it. We do not charge these Gentlemen with an Intention to reproach the King who granted the present Statutes to the University, or the great Man who procured them; we know they have great Respect for the Memories of both: But if this be the true Sense of the Statute, and it only restrains the explaining or altering Statutes which never had any Existence, it must be allowed to be an absurd and ridiculous Statute: If these Gentlemen would consider, what Care the

the King took in his Charter, that our present Statutes should always be in force, and that every Member of the University is thereby enjoined to take a solemn Oath that he will observe them, they could not but be convinced of the great Absurdity of this Interpretation; for is it credible, that the King, intending that his own Statutes should be for ever observed, and making a Statute on Purpose to prevent Alterations, should be only solicitous to secure the Observance of antient Statutes, and leave all his own to be repealed or altered at the Pleasure of the University? Such a Construction sufficiently exposes itself. If these Gentlemen had attended to the Words of the Statute, they would not have proposed such an Interpretation. The Statute supposes it might at some future Time be useful to the University to make new Statutes, or to explain Doubts in *Statutis jam conditis vel condendis*, and gives them Power to do it in either of those Cases; so that, under the Pretence of explaining, they do not elude the Force of any Statute, and so as this Power of explaining be not extended to Statutes *Regia Autoritate sancita vel confirmata*. Can any Thing be plainer than that the Statute forbids the explaining any Statutes *condita vel condenda*, which should have had the Royal Sanction at the Time such Explication is proposed to be made.

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The Case laid before Council states, that several Alterations were, from Time to Time, made by the University in their antient Statutes before the present Body of Statutes was received; and likewise states, that in some Instances, Rules and Orders had been sent by the Crown, with a Recommendation to the University, to make them into Statutes. It is difficult to understand why these Things were made Part of the Case, unless the Framers of it thought that these Instances were so many Proofs that the former Statutes had received the Royal Confirmation; but if they will be pleased to reflect, that all these Statutes were enacted by the Convocation, and were never afterwards confirmed by the Crown, they will find Reason to alter their Opinion in that Particular.

As soon as the Proctors had read their Opinion, two Gentlemen, being dissatisfied with the Supposition that the King had never given his Royal Confirmation to any Statutes before the present Body was granted and confirmed, and conceiving that such a Supposition would make their Construction of the Statute Tit. X. Sect. II. §. 2. absurd, insisted, that the Procuratorial Statutes had been made, and confirmed by the King, some Years before; and for Proof of it, mentioned the Title prefixed to them, viz.

Statuta

Statuta de Cyclo Procuratorio *Edita* Authoritate Serenissimi Regis Caroli Primi, confirmata in Domo Convocationis, A. D. 1628. The Proctors answered, that this Title was no Proof of a Royal Confirmation; for it appeared by the Register of that Time, that the King only commanded the University to make these Statutes, but that they were passed by the University, and never had any Confirmation from the King, till they were made Part of the present Statutes and confirmed with them. If these Gentlemen had considered the *plain Meaning* of the Title, they would not have mentioned it; for it is so far from contradicting the Register, or proving that the King confirmed these Statutes, that it expressly declares, that they were published, (*edita*) by the King's Command, or Authority, and confirmed in Convocation, which exactly agrees with the Account the Register gives of this Matter, and proves that the Proctors were not mistaken in their Opinion that they were *not* confirmed by the Crown.

It plainly appears then, that these Procuratorial Statutes (as they are called) stand exactly upon the same footing, as to their Confirmation by Royal Authority, as the others, having been confirmed *not before*, but

at the same Time, and in the same Manner with the others.

The Proctors being convinced that the University is restrained from explaining any of the Statutes confirmed by the Charter of King Charles the First, did not think it worth while to make any Observations upon the Statutes proposed at the Meeting; but as they are now printed, it will not be improper to take Notice, that a Complaint hath for some Years been made against keeping Names upon College Books, to give a Colour of voting to Gentlemen who have left the University, and are wholly unconcerned in the real Interest of it; and that this Complaint is pretended to have given Occasion for one of these Statutes: But doth this Statute cure the Mischief? If the Complaint be just, it affects those who had Names in College Books before last Easter, as much as those whose Names shall at any Time hereafter be found in College Books; and therefore the Statute, if it was designed to remove the Evil complained of, ought to have excluded every foreign Voter, how long soever he may have kept his Name in a Book for the Purpose of Voting only. Will not the World suspect that the Distinction was made to answer private Schemes, and that the

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the Good of the University was entirely disregarded ?

There is no Occasion to mention, that this Statute takes no Care to preserve the *Negatives* of the Vice Chancellor and Proctors; it will occur to every Person who shall read it: Perhaps it will be said, that the Negatives are not *directly* taken away: It is true; but is it not declared that the Votes of the Vice-Chancellor and Proctors in Convocation shall be *numbered with the other Suffrages*; and if they are to be taken into the Number of Votes, must not the *Majority* determine every Question? In a matter of this Nature some Disguise is necessary to be put on; they who design so important an Alteration must not speak their Meaning too plainly, lest they should destroy their own Schemes: But in this, they have discovered enough to raise a Jealousy; for the Statute, as it was first penned, had a particular saving of the *Negatives*, which is omitted in the Statute as it is now settled. With what View could this be done? Doth it not afford too much Reason to believe, that at some future Time this Point is intended to be disputed, and that this very Statute is to be used as an Argument against the Negative?

As to the other Statute, if it was in the Power of the University to give it their Sanction, it might *pass very innocently*, for it makes *no Alteration* of the *former Statute*. *Matriculation* was *never* understood to give any Person a Title to the Privileges of the University, unless he was admitted of some College or Hall, and had *Victum et Cubile* in it. The contrary Opinion, which was lately advanced by some Gentlemen, hath had it's *Effect*, and these Gentlemen are now willing to return to the *true meaning* of the Statute; but to avoid an apparent Inconsistency in their Conduct, desire that a *new Statute* may be enacted. We should have no Objection, if we were at *Liberty* to consent to it; but as we are under the highest Obligation to oppose it, we can only recommend the reading of the Stat. Tit. iii. Sect. i. which seems clearly to prove, that *Matriculation alone* doth not give a Right to the Privileges of the University.

It may be thought impertinent to produce Arguments in so plain a Case, and therefore we shall only add, that if *Matriculation alone* doth subject a Person to the Laws of the University, then every Gentleman in England, who hath been matriculated, continues a Member of the University, and subject to the Laws
of

of it ; and consequently can neither sue nor be sued in any other Court than the Vice Chancellor's. This is an Opinion too wild to be avowed by any one, and yet it is the direct Consequence of what some Gentlemen have advanced.

Soon after this Paper was published, the V-----r summoned a C-----n to *establish the S--tu--s*; and took Occasion to *abuse the Proctors* for their Paper. They defended themselves in a *becoming and proper* Manner; but did not escape the *Hisses* of the *intemperate* Part of the Society; this Treatment made it necessary for them to publish their *second Paper* in the Words following.

An Answer to the Objections made in Convocation to the Representation of the Conduct of the Proctors.

THE Business of the Convocation being opened by the Vice-Chancellor, the Statutes were read; and a Proposal being made to give them a second *Reading*, it was rejected by the Proctors; who in delivering their *Negative* used the following Words, "*Quibus de Causis vetamus, id palàm fecimus, &c.*" Upon which

which the Vice-Chancellor rose up and spoke to this Effect, “ Your Reasons are said to have “ been made public : I have received a printed “ Paper, and would know, whether this Paper “ contains your Reasons ” ; addressing himself to each Proctor separately. To this Question the Proctors having replied in the Affirmative, the Vice-Chancellor said *In hac Chartulâ omnia sunt falsa et futilia, et pravè detorta : Hæc Chartula continet Libellum.* When he was called upon by the Proctors to make good his Accusation, *Two Instances of Unfairness* were alledged by him : First, that notwithstanding the Statutes had been many Months under Consideration, yet the Proctors commence their Account from the *Fifteenth Day of June only.* This was *true*, but *nothing to his Purpose* ; and it was answered, that what had passed before this Time, was transacted under the Administration of the preceding Proctors ; to which the Proctors now in Office being utter Strangers, were under a Necessity of beginning their Representation *from the Time the Statutes were laid before them.*

The Vice-Chancellor went on to give a long Detail of the Proceedings with respect to the new Statutes in the *Conventus Præfectorum* ; and took occasion to mention, that it had been objected,

jected, that the University had *no power to alter or explain a Royal Statute*: And that to obviate this Difficulty, a Case had been drawn by a *very skilful Person*, and laid before Two eminent Council; who had given their Opinions in Favour of the Power claimed by the University. This gave him an Opportunity of introducing his *second Instance of Unfairness* charged upon the Proctors; and of calling upon them to declare, what they meant by *Their own State of the Case*. These Words were repeated with much Earnestness and Warmth. But yet he did not, nor can he assert, that the Gentlemen of opposite Sentiments were at all consulted with, or had any Hand in drawing up the Case; or that they ever saw it, till it was produced by the Vice-Chancellor at one of their Meetings. It is true they heard it read over: But considering the Length of the Case, and that several Matters mentioned in it were quite new to them; it could not be imagined, that They on one cursory Reading only could form any Judgment of it: And yet, it is said, the Question was put whether it should not be immediately laid before Council. So that the Vice-Chancellor is no more happy *in this Instance of Unfairness* than He was in the *Other*. For if the Gentlemen of opposite Sentiments were not consulted with in stating the Case,

nor

nor do to this Day know who drew it up, and only heard it once read : It remains undeniable that these Opinions were taken on *Their own State of the Case*.

The Vice-Chancellor probably did not intend a Compliment ; but the Gentlemen, who are of Opinion that explanatory Statutes could not be made in the *Manner proposed*, are obliged to Him for his Acknowledgement, that they had suggested a Method by which all Difficulties might be removed. *What* the Method was, and *how received*, will best appear from his own Words. “ *It is said Ad Regem adire nos posse : plenum opus Alexæ. De Rege ipso præclara omnia et dico et Sentio ; at Ministros* — “ *Ministris Ejus, &c.*

The *Practice* of the University was mentioned by the Vice Chancellor as a Proof of it's *Right to explain or alter Royal Statutes*. *Ab ipsis Academiæ Incunabulis* (says he) *Statuta explanavimus*. What is this more than to say, we have done it, *therefore* we may lawfully do it ? That the University might lawfully do it, till they received their present Statutes, nobody disputes. It was expressly admitted by the Proctors in their former Representation. But the Instances produced of their explaining or
altering

altering any Statutes since that Time are nothing to his Purpose; nor do they prove the least Inconsistency in the Conduct of the Proctors. One of the Instances was, that Declamations are enjoined by a Statute made since the *General Confirmation*; and That One of the Proctors in Obedience to that Statute hath regularly attended them. But if it had been considered that one of the *confirmed* Statutes gives power *aliquid de novo statuere*; and that the Exercise alluded to is *entirely new*, and *not an Explanation* of any former Statute, This Objection would not have been made.

A late Statute relating to Delegates of the Press, was urged as another Instance of the University's having made explanatory Statutes; and the Attendance of the Proctors upon this Delegation was also mentioned as a further Proof of their Inconsistency. But can it be shewn, that the Proctors attend this Delegation in Obedience to the *new Statute*? Are they not Delegates of the Press in Virtue of their Offices? And therefore, though they have been present at several Meetings, might they not have met in Virtue of their Office? The Proctors claim no Power from the *new Statute*: They act under their *antient Right*.

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The

The last Instance produced by the Vice-Chancellor, referred to the holding of Convocations on some Occasions in the Theatre. But, is there among the confirmed Statutes any one which appoints Convocations to be held in any particular Place? If there is not, how doth this Instance affect the Proctors? Did they ever deny that the University might make Rules at their Pleasure, concerning Matters not provided for by any of the confirmed Statutes?

But suppose these Instances had been so many Proofs that the University had made Explanatory Statutes; what Advantage could the Vice-Chancellor have made of it? Could he have said, that whatever hath been done, may lawfully be done again? Would not all serious Men examine the Instances by the Statutes; and if they are not warranted by them, would they not repent of having done wrong, rather than persist in doing it?

The Vice-Chancellor, having finished what he thought fit to say with respect to the Behaviour of the Proctors, addressed himself to the Members of Convocation for their Opinions touching the Explanatory Statutes. The Proctors here found it necessary to repeat their Negative: Whereupon the Vice-Chancellor called
upon

upon them in the following Words; *Jubeo vos facere Scrutinium*. How far this was consistent with the *Constitution* of the University, or the *Power expressly given by Statute* to the Proctors; they do not determine. They know not any Statute which countenances such a Command.

That no Objection which hath come to the Ears of the Proctors relating to their Conduct, however trifling it be, may be left unanswered, some Notice must be taken of an Observation made by some Gentlemen upon the Statute for transferring certain Act Exercises from St. Mary's Church to the Theatre. These Gentlemen say, that the Act Exercises were directed to be performed in St. Mary's Church by one of the Statutes confirmed by King Charles the First; and conclude, that if the University had Power to make this Alteration, it has the same Authority to alter any other of the confirmed Statutes. This Argument is founded on an Imagination that these Exercises were directed to be performed in St. Mary's Church *for ever*. But suppose that this Imagination is without Foundation; and that the Statute *expressly impowers* the University to *transfer* these Exercises to any more convenient Place; what then will become of this Argument? And *This was really the Case*. For that

very Statute hath the following Clause in it,
Donec alias de commodiori loco provisum fuerit.

The Proctors think that they have not *omitted* or *misrepresented* any Thing which was said by Mr. Vice-Chancellor; and that both in this Paper, and in that which they printed before, they have treated him, and every other Gentleman, with as much Respect as is consistent with a *true Representation* of their Conduct, and therefore they have a Right to complain of the Treatment they received at the last Convocation. *Reproaches* and *Hissings* were plentifully bestowed upon them, without any Provocation: To *put their Negative*, where the Interest of the University, or *their own Oaths* require it, is an undoubted Privilege of the Proctors: And though they are no more obliged to give Reasons for doing it, than other Gentlemen are obliged to give Reasons for their Votes; yet they submitted to publish many Objections to the two Explanatory Statutes, several Days before they were proposed in Convocation. The Proctors expected that the University would at least have been satisfied that they were candid and impartial; and that their Objections, if they were not well founded, were the Result of their Judgment. But this Expectation, reasonable as it was, proved vain; and they were

were treated with *Reproaches* from One whose Duty it was to have protected them; and with *Hisses* from other Gentlemen, whose Education should have taught them a more ingenuous and liberal Behaviour. The Proctors Objections had been publick more than ten Days, and Gentlemen had sufficient Time to have shewn the *Falsity* or *Futility* of them in a proper Manner, if they had been able to do it. This was attempted by no one, except the Vice-Chancellor; how far he hath fallen short of doing it, hath been already observed. So that the Proctors may now affirm, that no one *Fact* stated in their Representation hath been proved to be *false*; nor one *Reason* proved to be *futile*. Reason and Truth are too strong to be born down by Noise and Clamour; and whoever sets himself against them, will for ever be foiled. Though the Proctors are entirely satisfied that what they have done is right, and have no Uneasiness from the Treatment they have met with; yet they thought themselves concerned to give this further Representation of their Conduct: And they think that Gentlemen, when their *Heat and Passions* subside, and they can coolly reflect upon what has passed with respect to these Statutes, will justify the Proctors, and condemn the Violence with which they have been pursued.

These

These Papers were drawn up with *so much Decency*, and so fully confuted every *Pretence* which had been offered in support of the *Power* of making *explanatory Statutes*, that it was imagined, this Affair would not have been resumed, at least whilst the *present P-----s* continued in Office; But upon the *Fifth of Oct---r*, a *C-----n* being held for swearing the new *V-----*, a Speech was made, according to Custom, by the old one immediately before he left his Office, in which he *again reproached and abused BOTH the P-----s*, and in a *more particular Manner*, the *Senior P-----r*: He was heard without Interruption, till he had uttered what did not become *him to speak*, nor that *venerable Assembly to hear*. Reproach is expressly forbid by our *St---tes*; and as no one can claim a Right to transgress them, he *might and ought to have been interrupted*. His *Abuse* would have been more excusable, if it had been *sudden*, and without *Premeditation*, but it was a *studied Performance*: And that nothing might be left unsaid, which his Resentment and Passion had suggested, it was *reduced into Writing*, and read in *C-----n*. The *Senior P-----r*, though amazed at this *unexampled Indecency*, very properly took Notice, how much against the *Duty of his Office* he had behaved; that the *S---tu--s* made him *Tutorem et Defensorem*, and enjoined

enjoined him to redress all Injuries; that there was a *particular Law* against *Contumely*, which he read: The V-----r commanded him Silence, and threatned to commit him to Prison. Is this Language to be endured? Is one of the *Chief Magistrates* to be *publickly insulted*, and not suffered to *defend himself*? This is a Right enjoyed by all the Subjects of *England*: Is the U-----y the *only* Place, where this Privilege is denied? Are its Members subject to the *arbitrary Will* of *one Man*, who hath neither more *Virtue* nor *Judgment* than many others? Pardon the Warmth; the V-----r deserves it all: It is no longer the Cause of the P-----rs; it is become the Cause of the *whole U-----y*. If V-----rs, through a Lust of Power, shall assume this Authority, whose Liberty is safe? A Menace to *imprison* a P-----r was never before heard. I have indeed been told, that a very worthy Member of C-----n was formerly threatned with *Imprisonment* for *falsely* charging certain H--ds of H----s with being *vafri Homines*; but it never entered into the P-----r's Thoughts to call the *late V-----r vaser Homo*; Why, therefore, was he threatned with it? If the V-----r had known *his Power*, or the S--tu--s, he must have been sensible he had *no* Authority to commit the meanest Member of C-----n, for
what

what passed in it, without the *Concurrence of Both the P-----s*, and the *major Part* of the Assembly. But to what Lengths will some Mens Passions carry them? Happy is it for the U-----y, that V-----rs have *not* the Power they grasp after; and that the S--tu--s have prescribed Rules for their Conduct, as well as for the Conduct of the *other* Members of it. The Laws of the U-----y are general, and have provided suitable Punishments for all Offences, that may hurt the Peace or good Order of it: The V-----r is not exempted from the Observance of them, and though no Person is authorized by the S--tu--s to inflict the *Penalties* upon him, yet he is *under the Law*, and *ought* to obey it: Perhaps it would have been better, if Power had been given to some Persons to hear Complaints against V-----rs; for I have heard of *one*, who could not deny that he had *offended* in such a Manner, as to render himself *obnoxious to Punishment*; but was not ashamed to shelter himself under this *Defect* in the S--tu--s, and to say, *Who hath Power to punish me?* But let not not V-----rs presume too much upon this; a *visitatorial Power* can reach *them*: * *Many* of our *Kings* have exercised it, and *Both Universities*, in the great Controversy

* Rushworth's Collections.

which

which they had with Archbishop *Laud*, concerning his Authority to visit them *Jure Metropolitico*, acknowledged it to be in the Crown.

The late V-----r in his last Speech insisted that though the P-----s had a *Negative*, yet they had no Right to stop a *Scrutiny*, or the taking the Votes of the D-----rs and M-----rs; I know not whether he was serious or not; but sure I am, that it is very absurd to ask the D-----rs and M-----rs whether *they* will pass that into a Law, which the V-----r himself admitted could *not possibly become a Law*, after the *Negative* was declared. I cannot suspect him of desiring so *idle and impertinent* a Thing, if he had not been told that the P-----s by taking the *Scrutiny* would be adjudged to have *waved their Negative*, and to have left the whole Matter to the Determination of the *House*. What have the P-----s done to draw upon them these Insults? It is true they prevented the establishing *two Statutes*, which they thought, and still think, that not only *they*, but *all the Members of C-----n*, are obliged by their *Oaths* to *oppose*. To have made the P-----s *faulty*, the V-----r should have acted in a very different Manner; and should have shewn, by *Reason and Argument*, that the U-----y hath the Power

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which he contends for. Did he do this? Did he urge *One sensible Argument* to this Purpose? His *Repetition* of what the U-----y did *à primordiis*, was idle, and had no Relation to the Matter in Dispute: How often is he to be told, that we are *not* enquiring, what Power the U-----y had over the *antient unconfirmed S--tu--s*; but whether it is not restrained from altering the *present S--tu--s*. The *S--tu--e* which forbids it, and which *All* the Members of C-----n have taken an *Oath* to observe, hath been pointed out; and the late V-----r hath been called upon to shew that the Power he claims is *not inconsistent* with it: But he, being conscious that the Words are too plain and clear to be perverted, hath *prudently* declined the Consideration of the *S--tu--e*, and hath resorted to *Precedents*, and the *Behaviour* of his *Predecessors*. The Instances of this Kind which he relied upon in his first Declamation, were fully answered in the *P-----rs* last Paper; and by dropping them in his last Speech he seems to be sensible that they were *impertinent*, and nothing to the Purpose; but unwilling to give up the *only* Thing he hath to offer in his own Defence, he told us a Story of what his *Predecessors* had done with respect to the *Cæna Vespertialis* mentioned in the confirmed *S--tu--s* of *King Charles the First*: Will he never give over

over trifling ; was this Supper *instituted* by any of the *confirmed S--tu--s* ; or do they take any *other* Notice of it, or of the Persons who were at the Expence of it, than barely to mention the *Custom* and *Practice* of the U-----y with Relation to it ? If he had not read this Part of the *S--tu--s*, how could he venture, in so solemn an Assembly, to draw any Argument from it ? If he had read it, and *knowingly misrepresented* it, I leave it to himself to say, what Name this Conduct deserves. This Gentleman having formerly set in the D-----y Chair, must be supposed to be well skilled in Casuistry : As therefore he hath not been able, after *Four Months* Consideration, to support the Power of altering or explaining our present *S--tu--s*, it may be reasonably concluded, that 'tis *too hard* to be done. I am not conscious that I have done the late V-----r wrong, in what I have said of his last Speech ; but if I have mistaken his Meaning, he is able to do himself Justice by *publishing* it ; and I own I shall be glad to see it. His *Admonition* of the Senior P-----r to behave with *Decency* towards the C-----n will make a fine Figure at the Close of the most *abusive* Declamation that was ever uttered in that Assembly, and will convince the World, that he *admonishes* and *argues* with *equal Judgment*. This C-----n

was held in the *Theatre*, and all the Doors were thrown open, which gave the Youth of the Place an Opportunity of hearing this *famous Declamation*; and of learning that *no Regard* is to be paid to the *P-----s*, though he could not be ignorant that *they* are equally concerned in the Care of them with *himself*. View the late *V-----r* in what Light you please, his Conduct will appear altogether extraordinary: If you consider him as the *chief Magistrate* of the *U-----y*, entrusted with the execution of its *Laws*; you will find him behaving in a Manner not easily reconcileable with them, in this very Declamation. If you consider him as having the Care of young Gentlemen, you will find him weakening the Influence and Authority of Others who were *also* intrusted with it. If you consider him as obliged by the *S--tu--s* not to *attempt any Alteration or Explanation* of them; you will find him impetuous in his Zeal for altering them; and in his *Abuse* of the *P-----s* for obstructing him, without being able to *justify* the Alterations, or to *answer the Objections* made by the *P-----rs* against it. This Usage of the *P-----rs* was accompanied with *Hisses* from several Persons, without the least Check or Rebuke from the *V-----r*. You will wonder at this *Licentiousness* in so venerable an Assembly; But the

the P-----rs despise it, and the Men who were meanly guilty of it ; for Guilt and Meanness it was : To insult their *Superiors* without Provocation, is a Fault *unbecoming* Persons of a *liberal Education*; and to do it in a Language *not natural* to the *human Kind*, but learnt from the lowest and most odious Species of *Brutes*, is *Meanness beyond Expression*.

I have now laid the whole Case, and all that hath passed in the U-----y with respect to these two S--tu--s before you ; and you will observe from the ill Usage the P-----s have received, and from the *Heat and Passion* which were shewn by *some Gentlemen*, that they are not at present in a Temper to listen to *Reason* ; and as this Heat hath not been checked by the *Magistrates*, it is necessary to *appeal to the Publick*, for their Judgment, whether the P-----rs acted otherwise than became them in making use of their *Negative*. The *Pretence*, that the Words *Statuta Regia Auctoritate confirmata*, Tit. X. Sect. 2. relate *only* to S--tu--s which had been *especially confirmed by the Crown before the general Confirmation*, is too absurd to be longer insisted upon ; no Gentleman hath been able to shew that *any one S--tu-e* was ever *so* confirmed ; nor is this Pretence *consistent with the Charter* which was sent down with the S--tu--s,

S-tu-s, and declared that they should be *for ever* in Force. If the *S-tu-s* left a Power in the U-----y to alter them, can they be binding *for ever*? These Things cannot stand together. The *P-----s* insisted in their *Representation*, that the U-----y was forbid to alter or explain any *S-tu-s, condita vel condenda, confirmata Regia Auctoritate*: Hath any one attempted to shew that the Word *condenda* hath *no Meaning* at all; or that it can bear any *other Sense* than that the *P-----s* have understood it in.

The Publick is interested in the Conduct of the U-----y, and expects that the Gentlemen who have been so warm in this Question, do either shew that they have the *Power claimed* by them; or acknowledge that they *cannot*, without *Breach of their Oaths*, proceed to establish these new Laws. This Matter is now before a Tribunal that cannot be imposed upon, and will not out of Complaisance to any Man construe *Noise and Abuse* to be *Reason and Argument*. At this Tribunal *Reason and Truth* will have their proper Weight; and the *P-----s*, having in a *publick Manner* informed the U-----y that they thought themselves under the Obligation of an *Oath* to oppose these Explanatory Statutes, and having heard nothing to

to convince them of a Mistake, will be adjudged to have done their Duty, by putting a Stop to them : At this Tribunal it will be considered that the U-----y is a Place of *Education*, and that young Gentlemen will not be improved in their Morals, by having been permitted to see their Magistrates hissed and insulted, unless some other Fault can be imputed to them, than a *strict Adherence to their Oaths*. You have now this whole Controversy before you, and if you judge of it as I do, you will think it is Time for the *serious* Part of the U-----y to interpose, and restrain the *thoughtless noisy* People from bringing a *Reproach* upon it.

I am, &c,

O-----D, 1759.



